

120 FERC ¶ 61,279  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Trans Alaska Pipeline System

Docket No. OR89-2-020

ORDER DENYING REHEARING

(Issued September 26, 2007)

1. On March 26, 2007, ConocoPhillips (Conoco) filed a motion in the above captioned Trans Alaska Pipeline System (TAPS) Quality Bank docket, requesting the Commission “rule in the near future to approve the Notice of Filing Basis For Retroactive Calculations” filed by the TAPS Carriers<sup>1</sup> on August 15, 2006 (the Calculations Filing). Petro Star Inc. filed an answer stating that any ruling on the motion should be subject to the disposition of Petro Star’s pending court appeal of the Commission’s ruling on the TAPS Carriers’ tariff filing in Docket No. IS06-466-000. On June 7, 2007, the Commission issued an order denying Conoco’s motion.<sup>2</sup> Petro Star filed a request for rehearing of the June 7 Order. For the reasons set forth below, the Commission denies rehearing.

**Background**

2. The Quality Bank makes monetary adjustments among shippers on TAPS depending on the quality of the crude oil tendered. The current methodology values the tendered crude oil on the value of the constituent “cuts” of the tendered oil as determined under the distillation method. In Commission Opinion Nos. 481, 481-A, and 481-B (Opinion No. 481), in this docket, the Commission determined the valuations of certain

---

<sup>1</sup> The TAPS Carriers consist of BP Pipelines (Alaska) Inc., Conoco, ExxonMobil Pipeline Company, Koch Alaska Pipeline Company, LLC, and Unocal Pipeline Company.

<sup>2</sup>*Trans Alaska Pipeline System*, 119 FERC ¶ 61,254 (2007) (June 7 Order).

cuts effective November 1, 2005, and applicable retroactively as to some cuts with refunds going as far back as February 1, 2000.<sup>3</sup> The Commission directed the TAPS Carriers to submit compliance filings within 30 days after the issuance of the final Opinion No. 481 Order.

3. On July 3, 2006, in Docket No. IS06-466-000, *et al.*, the TAPS Carriers filed identical tariffs to comply with the Opinion No. 481, which tariffs incorporated the new Quality Bank valuations. Attached to each filing was a June 29, 2006, memorandum of the Quality Bank Administrator (QBA)<sup>4</sup> that provided the basis for the revised valuations of the cuts determined by Opinion No. 481, and included eleven exhibits indicating how the QBA arrived at the valuations. The QBA described how he used the Nelson-Farrar indices to escalate the processing cost deductions for two cuts, Resid and Heavy Distillate, which cuts were subject to retroactive refunds. Using the Nelson-Farrar Index, the QBA in Exhibit 2 showed the escalation ratio for 2001 through 2006, and necessarily will recalculate and adjust this ratio each January in the subsequent years.

4. Petro Star, jointly BP Exploration (Alaska) and BP Oil Supply Company (BP Shippers), and Chevron filed protests to the July 3 filings. They all protested the QBA's use of the Nelson-Farrar Index. BP Shippers also asserted that the TAPS Carriers should file additional tariff sheets specifying the component values that the QBA should apply when calculating the refunds for the refund period of February 1, 2000, to October 31, 2005. The TAPS Carriers responded that they would file the component values of the calculations.

5. On August 15, 2006, the TAPS Carriers filed in this docket the Calculations Filing, consisting of the QBA's calculations totaling almost 400 pages. They did not file any additional tariff sheets. The TAPS Carriers stated that the Calculations Filing enables one to determine whether the QBA correctly calculated the component values for the refund period. The Commission did not issue a public notice of the August 15, 2006, filing. However, on August 30, 2006, Petro Star protested the Calculations Filing (the August 30 protest) for the same reason it had protested the tariff filings in the Docket No. IS06-466-000, *et al.*, proceedings. Petro Star stated that it had "protested the July

---

<sup>3</sup> *Trans Alaska Pipeline System*, 113 FERC ¶ 61,062 (2005) (Opinion No. 481), *order on reh'g*, 114 FERC ¶ 61,323 (2006) (Opinion No. 481-A), *order on reh'g*, 115 FERC ¶ 61,287 (June 1, 2006) (Opinion No. 481-B). Appeals of the Commission's Opinion No. 481 orders are pending in the United States Court of Appeals for the District of Columbia Circuit.

<sup>4</sup> The QBA is an independent expert who administers the Quality Bank.

tariffs because they misapplied Nelson-Farrar inflation factors,” and the Calculations Filing “reproduce[s] the same error as the July tariffs . . . .”<sup>5</sup>

6. On September 1, 2006, the Commission issued an order,<sup>6</sup> which accepted the July 3, 2006, tariff sheets, effective November 1, 2005. The order discussed the adjustment issue raised by the protestors concerning the QBA’s use of the Nelson-Farrar Index, but found no merit in it. The order, in note 7, referred to the Calculations Filing, but did not discuss the filing. Petro Star filed a request for rehearing of the September 1 Order regarding the Nelson-Farrar index adjustment calculation.

7. After the Commission issued the September 1 Order, a number of parties filed requests in Docket No. OR89-2-000, that the Commission act on the Calculations Filing. Petro Star objected on the grounds that it’s rehearing request of the September 1 Order was still pending. On January 26, 2007, the Commission issued an order denying Petro Star’s request for rehearing of the Commission’s September 1 Order concluding that the QBA properly applied the Nelson-Farrar Index.<sup>7</sup> This order made no reference to the Calculations Filing. Petro Star states that it filed a timely petition for review of the January 2007 Order in the D.C. Circuit, which remains pending.<sup>8</sup>

8. On March 26, 2007, Conoco filed its motion. Conoco stated that only Petro Star protested the Calculations Filing, and the only issue raised in that protest related to the QBA’s use of the Nelson-Farrar Index to adjust processing costs. Conoco asserted that since the Commission’s January 2007 Order denied Petro Star’s request for rehearing on that issue there was no contested issue that the Commission had to determine before it could rule on the Calculations Filing, which ruling was necessary so the QBA could issue invoices for the refund period. A number of parties filed in support of Conoco’s motion. Petro Star Inc. filed an answer stating that in acting on that motion the Commission should address Petro Star’s protest on the Calculations Filing and make any approval subject to the disposition of Petro Star’s pending court appeal of the Commission’s ruling on the TAPS Carriers’ tariff filings in Docket No. IS06-466-000, *et al.*

---

<sup>5</sup> Protest at 2.

<sup>6</sup> *BP Pipelines (Alaska) Inc., et al.*, 116 FERC ¶61,208 (2006) (September 1 Order).

<sup>7</sup> *BP Pipelines (Alaska) Inc., et al.*, 118 FERC ¶61,056 (2007) (January 2007 Order).

<sup>8</sup> *Petro Star, Inc. v. FERC*, D.C. Cir. No. 07-1034.

9. The June 7 Order denied Conoco's motion. The order stated that the Commission did not require the TAPS Carriers or the QBA to submit the Calculations Filing, and the TAPS Carriers voluntarily made the Calculations Filing in response to BP Shippers' request. Further, it stated that the Commission's role regarding the Quality Bank is to establish the rate aspects of the various components of commingled crude oil stream, which the Commission fully exercised in the Opinion No. 481 Orders. Moreover, the June 7 Order reiterated that it was "not the function of the Commission to oversee the operations of the Quality Bank." Since there was no outstanding issue regarding the QBA's rate adjustment calculations, the order stated that the QBA was in a position to issue revised invoices for the refund period, and the Commission did not envision any further action on this matter.

### **Petro Star's Request for Rehearing**

10. Petro Star asserts that the Commission erred by failing to rule on Petro Star's protest of the Calculations Filing. Petro Star states that the June 7 Order acknowledged Petro Star's protest of the Calculations Filing, but nevertheless the order found that "there is no outstanding protest to the [retroactive] calculations filing."<sup>9</sup> Petro Star asserts that since the Commission never ruled on Petro Star's August 30 protest, that finding, therefore, is unsupported. Since the Commission gave no other reason for failing to rule on its protest, Petro Star contends that the June 7 Order is arbitrary and capricious.

11. Petro Star argues that the Commission did not rely on the September 1 Order, in Docket No. IS06-466-000, *et al.*, to justify its decision not to rule on Petro Star's protest in this docket. Moreover, it contends that the tariff filings did not purport to address how the TAPS Carriers proposed to adjust the past Quality Bank payments for the refund period, February 1, 2000, through October 31, 2005, but only applied prospectively after November 1, 2005. Thus, Petro Star contends, the September 1 Order, accepting the tariff filings and rejecting the protest to those tariffs, did not address the merits of Petro Star's protest to the Calculations Filing in Docket No. OR89-2, which therefore remains pending.

12. Moreover, Petro Star asserts, in the June 7 Order, the Commission did not rule that the September 1 Order disposed of Petro Star's protest to the Calculations Filing. Petro Star states that the June 7 Order noted that Petro Star's August 30 protest to the Calculations Filing is based on the same claim as its protest to the tariff filings. However, Petro Star asserts, the June 7 Order never disposed of the August 30 protest, nor even stated that the Calculations Filing is subject to the outcome of the pending court

---

<sup>9</sup> June 7 Order, P 10.

challenges to the tariff filing. Thus, Petro Star argues, it is left in a jurisdictional limbo as to the Calculations Filing.

13. Petro Star contends that the Commission's failure to rule on Petro Star's protest to the Calculations Filing leaves no final order from which Petro Star may seek judicial review of the Calculations Filing, since the Calculations filing is not part of the record in Docket No. IS06-466-000, *et al.* That failure, it argues, arbitrarily and capriciously frustrates Petro Star's right to judicial review of the June 7 Order, and directly interferes with the court of appeal's jurisdiction by unreasonably delaying a final decision. Petro Star requests the Commission to grant rehearing, and issue an order ruling on Petro Star's protest to the Calculations Filing.

### **Discussion**

14. The June 7 Order addressed Conoco's motion requesting that the Commission approve the TAPS Carriers' Calculations Filing. As the Commission explained, the TAPS Carriers made the Calculations Filing voluntarily and not pursuant to any Commission order. The filing set forth the values that the QBA will use in calculating the refunds required by Opinion No. 481. Since the only "tariff" issue was how the QBA would use the Nelson-Farrar Index, after the Commission upheld the QBA's action in the September 1 Order and then denied rehearing of the September 1 Order, the QBA could issue invoices for all the Quality Bank adjustments, including the refund period. Thus, the June 7 Order denied the motion since there was no reason for the Commission to take any action with respect to the Calculations Filing.

15. Petro Star argues that the Commission erred in stating there was no outstanding protest to the Calculations Filing when in fact the Commission never addressed Petro Star's August 30 protest to the Calculations Filing. Petro Star's argument does not go to the merits of the Commission's ruling denying Conoco's motion. Petro Star has not shown why the Commission needed to address a filing voluntarily made by the TAPS Carriers, which did not include any new tariff sheets.

16. Moreover, while Petro Star's contention appears correct on its face, it fails to recognize that there was no reason for the Commission to act on the protest. The Commission previously rejected Petro Star's protest to the TAPS Carriers' tariff filing in the September 1 Order, and Petro Star concedes that the August 30 protest raised the same Nelson-Farrar issue as Petro Star's protest to the tariff filing. As described *supra* P 3, the escalation ratio for the period commencing November 1, 2005, the "prospective period," is based on the escalation ratio in the refund period. Petro Star is seeking judicial review of the Commission's order on the tariff filing. The same Nelson-Farrar ratio that applies to the cost adjustment in the prospective period would apply to the

calculations in the refund period. Clearly, any court decision on the component values in the tariff filing case would apply to the component values used in the refund period. Thus, any ruling or escalation ratio in the prospective period would necessarily also apply to the refund period.

17. Petro Star also argues that the Commission must act on its August 30 protest to the Calculations Filing to allow Petro Star to seek judicial review with regard to the Calculations Filing. Since the Commission is clarifying that any court ruling in the tariff filing case would apply to the Calculations Filing, there would be no need for a separate judicial ruling on the Calculations Filing. Moreover, the instant order is a final order, and Petro Star may seek review of this order.

18. The Commission adheres to its prior ruling denying Conoco's motion, and will deny rehearing. However, we clarify the ruling to the extent stated above.

The Commission orders:

Petro Star's request for rehearing is denied, but clarification is granted as set forth above.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.